

Title	Appointment of Child Abuse Prevention and Treatment Act (CAPTA) Guardians ad Litem for Children in Juvenile Delinquency Proceedings and Criminal Prosecutions Involving Abuse or Neglect of a Child (amend Cal. Rules of Court, rules 1401; adopt rules 4.120, and 1471.5)
Summary	The proposed amendments to rule 1401 and the adoption of rules 4.120 and 1471.5 would fulfill the mandates of Welfare and Institutions Code section 326.5 and the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. § 5106a et seq.) by providing for the appointment of a special CAPTA guardian ad litem for the alleged child victims in juvenile delinquency proceedings and criminal prosecutions involving child abuse or neglect. The proposed rules would also define the role, responsibilities, and limitations of the CAPTA guardians ad litem appointed for children in such cases. The rules would require the initial appointment of an attorney as the child's CAPTA guardian ad litem and permit the appointment of a Court Appointed Special Advocate (CASA) as the child's CAPTA guardian ad litem only if the court finds, after considering the recommendation of the attorney guardian ad litem, that the substitution of a CASA as the child's CAPTA guardian ad litem is in the best interest of the child.
Source	Family and Juvenile Law Advisory Committee
Staff	Aleta Beaupied, Staff Attorney, 415-865-7729, aleta.beaupied@jud.ca.gov
Discussion	<p>The Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. § 5106a et seq.) provides funding to the states for the purpose of improving the child protective services system. One of the eligibility requirements for this funding is the existence of a statewide law or system that provides for the appointment of a guardian ad litem in every case involving an abused or neglected child that results in a judicial proceeding. The CAPTA guardian ad litem may be either an attorney or a Court Appointed Special Advocate (CASA) who will represent the child in the proceedings. Federal CAPTA regulations prohibit the attorney responsible for presenting the evidence alleging the child abuse or neglect from serving as the child's CAPTA guardian ad litem. (45 Code of Federal Regulations 1340.14(g).)</p> <p>In 1999, California lost eligibility for CAPTA funding because, at that time, Welfare and Institutions Code section 326 provided that the probation officer or social worker who filed the dependency petition or</p>

another adult could be appointed to act as a child's CAPTA guardian ad litem rather than an attorney or CASA.

The California Legislature responded to this loss of CAPTA eligibility by enacting Senate Bill 2160, which repealed Welfare and Institutions Code section 326 and added section 326.5. Section 326.5 provides:

The Judicial Council shall adopt a rule of court effective July 1, 2001, that complies with the requirement of the federal Child Abuse Prevention and Treatment Act (Public Law 93-247) for the appointment of a guardian ad litem, who may be an attorney or a court-appointed special advocate, for a child in cases in which a petition is filed based upon neglect or abuse of the child or in which a prosecution is initiated under the Penal Code arising from neglect or abuse of the child. The rule of court may include guidelines to the courts for determining when an attorney should be appointed rather than a court appointed special advocate, and caseload standards for guardians ad litem.

The council amended rule 1438, effective July 1, 2001. The amendments included the addition of the criteria necessary for the court to find on the record that the child would not benefit from the appointment of counsel (rule 1438(b)) and the guidelines for appointment of a Court Appointed Special Advocate (CASA) as a guardian ad litem if an attorney is not appointed for the child (rule 1438(e).) The council directed the Family and Juvenile Law Advisory Committee to further define the role of a guardian ad litem and, if appropriate, to distinguish the circumstances in which an attorney would properly fill that role from those circumstances in which a CASA might do so.

In response to the council's directive, the Family and Juvenile Law Advisory Committee developed and circulated for comment a proposal providing for the appointment of a CAPTA guardian ad litem for:

- a) a child subject to a juvenile dependency petition (proposed rule 1448);
- b) a child victim in a criminal prosecution for abuse or neglect of a child (proposed rule 4.120); and
- c) a child victim in a delinquency proceeding for abuse or

neglect of a child (proposed rule 1471.5).

On November 1, 2002, the council adopted rule 1448, which provides for the appointment of a CAPTA guardian ad litem for a child subject to a juvenile dependency petition.

Proposed rule 4.120 and proposed rule 1471.5 were withdrawn for further study to determine the governmental agency with the fiscal responsibility for all costs associated with the implementation of the proposed rules.

A review of the prior statute reveals that all costs associated with the appointment of a CAPTA guardian ad litem in criminal prosecutions and delinquency proceedings involving child abuse or neglect have always been the fiscal responsibility of county government.

Former Welfare and Institutions Code section 326 provided for the appointment of the probation officer or social worker as the CAPTA guardian ad litem. Section 326 provided:

For the purposes of Child Abuse Prevention and Treatment Act grants to states (Public Law 93-247), in all cases in which there is filed a petition based upon alleged neglect or abuse of the minor, or in which a prosecution is initiated under the Penal Code arising from neglect or abuse of the minor, the probation officer or social worker who files a petition under this chapter shall be the guardian ad litem to represent the interests of the minor in proceedings under this chapter, unless the court shall appoint another adult as guardian ad litem. However, the guardian ad litem shall not be the attorney responsible for presenting evidence alleging child abuse or neglect in judicial proceedings. No bond shall be required from any guardian ad litem acting under this section.

Probation officers and social workers are employees of county agencies and during the effective period of Welfare and Institutions Code section 326 all costs associated with their employment, including fulfillment of their duties as CAPTA guardians ad litem, and then expenses such as transcript costs, were county financial obligations. The costs associated with the duties of a CAPTA guardian ad litem continue as county financial obligations under proposed rules 4.120 and 1471.5

42 U.S.C. 5106a(b)(2)(A)(ix) provides that the CAPTA guardian ad litem is appointed to represent the child:

- (I) to obtain first hand, a clear understanding of the situation and needs of the child; and
- (II) to make recommendations to the court concerning the best interests of the child.

Making fully informed recommendations regarding the child's best interests based upon first hand knowledge requires access to information regarding the circumstances of the alleged criminal acts involving the child. The rules set forth a noticed motion procedure for access to evidence regarding the alleged criminal acts involving the child which will enable the CAPTA guardian ad litem to gather information and obtain a clear understanding of the child's situation and needs. The rules provide for access to transcripts to trials or proceedings related to the matter, which is especially critical for any successor CAPTA guardian ad litem who has not been present during proceedings prior to his or her appointment.

The rules set forth the CAPTA guardian ad litem's specific duties and rights, which ensure that the CAPTA guardian ad litem obtains first hand knowledge and is able to make recommendations to the court regarding the child's best interests. These rights and duties are: (1) the right and duty to interview the child; (2) the right to be notified of any requests to interview the child, the right to refuse an interview on behalf of a child subject to the court's review, and the right to be present at any interviews; (3) the right to accompany the child to all hearings; and (4) the duty to advise the court and counsel of any special needs the child may have.

The rules limit the CAPTA guardian ad litem's role by stating that he or she is not entitled to interview or interrogate other witnesses, question or cross-examine witnesses, or otherwise participate in the delinquency proceeding or criminal prosecution except as an advisor and support person for the child.

Attachments

Rule 1401 of the California Rules of Court is amended, effective July 1, 2003, to read:

Rule 1401. Definitions; construction of terms

- (a) [Definitions (§§ 202(e), 319, 361.5(a)(3), 366(a)(1)(B), 636, 727.3(c)(2), 727.4(d))] As used in these rules, unless the context or subject matter otherwise requires:

(1)–(13) ***

(14) “Child Abuse Prevention and Treatment Act (CAPTA) guardian ad litem for child victim in a criminal prosecution for abuse or neglect of a child” is defined in rule 4.120.

(15) “Child Abuse Prevention and Treatment Act (CAPTA) guardian ad litem for child victim of a minor perpetrator in a delinquency proceeding for abuse or neglect of a child” is defined in rule 1471.5.

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~~(22)~~(24) ***

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2 ~~(27)~~(29) ***
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4 (28)(30) ***
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6 ~~(29)~~(31) ***
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8 (b) ***

Effective July 1, 2003, Rule 1471.5 of the California Rules of Court is adopted to read:

Rule 1471.5. Child Abuse Prevention and Treatment Act (CAPTA) guardian ad litem for child victim of the minor perpetrator in a delinquency proceeding for abuse or neglect of a child

(a) **[Authority]** This rule is adopted under Welfare and Institutions Code section 326.5.

(b) **[Applicability]** The definition of the role and responsibilities of a CAPTA guardian ad litem for a child who is alleged to be a victim of the minor perpetrator in a delinquency petition for abuse or neglect of a child applies exclusively to such delinquency proceeding, and is distinct from the definitions of guardian ad litem in all other juvenile, civil, family and criminal proceedings. No limitation period for bringing an action based upon an injury to the child commences running solely by reason of the appointment of a CAPTA guardian ad litem under Welfare and Institutions Code section 326.5 and this rule.

(c) **[Definition]** For purposes of this rule, “abuse or neglect” of a child is defined as set forth in 42 U.S.C. section 5106g and 45 C.F.R. section 1340.2.

(d) **[Appointment]** At the detention hearing the juvenile court must appoint an attorney as CAPTA guardian ad litem for a child who is alleged to be a victim of the minor perpetrator in a delinquency petition alleging abuse or neglect of a child. Once the attorney appointed for the child victim has performed the general responsibilities to that child, as provided in (e), the court may substitute a Court Appointed Special Advocate as CAPTA guardian ad litem for the child, if available, in place of the attorney if the court finds, after considering the recommendation of the attorney, that such substitution is in the child’s best interest.

(e) **[General responsibilities]** The general responsibilities of a CAPTA guardian ad litem appointed for a child who is alleged to be a victim of the minor perpetrator in a delinquency petition alleging abuse or neglect of a child are:

- (1) To obtain firsthand a clear understanding of the situation and needs of the child; and
- (2) To make such recommendations to the court concerning the best interest of the child as the guardian ad litem finds appropriate.

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2 **(f) [Specific duties and rights]** The specific duties and rights of a CAPTA
3 guardian ad litem appointed for a child who is alleged to be the victim of the
4 minor perpetrator in a delinquency petition alleging abuse or neglect of a child
5 are:
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7 (1) The right and duty to interview the child;
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9 (2) The rights to be notified of any request to interview the child, to refuse on
10 behalf of the child any interview of the child by others subject to the
11 court's review on noticed motion by the person seeking the interview, and
12 to be present at any interview of the child by others, including law
13 enforcement officers, prosecuting attorneys, and defense attorneys;
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15 (3) The right to accompany the child to all hearings related to the delinquency
16 proceeding, including trial, and to be present throughout the proceeding;
17 and
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19 (4) The duty to advise the court and all counsel in writing of any special
20 needs, illness, disability, or other condition of the child that may impair
21 his or her participation in the proceedings or exacerbate trauma caused to
22 him or her by the participation.
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24 **(g) [Access to evidence]**

25 (1) In order to fulfill the responsibilities in (e) and (f), the CAPTA
26 guardian ad litem may file a noticed motion for access to prosecution and
27 defense evidence at the time such evidence is made available to both the
28 prosecuting attorneys and the defense attorneys, including:
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30 (i) Documents made available to both the prosecuting attorneys and
31 defense attorneys;
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33 (ii) Physical evidence relevant to the investigation upon which the
34 prosecution is based, which is made available to both the prosecuting
35 attorneys and defense attorneys;
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37 (iii) Audio or video recordings made available to both the prosecuting and
38 defense attorneys; and
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40 (iv) Transcripts of any hearings or trials related to the matter.
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42 (2) At the hearing on the motion, the CAPTA guardian ad litem is
43 presumptively entitled to view or receive copies of such evidence, at no

1 cost to the CAPTA guardian ad litem, absent a showing of good cause
2 warranting restriction of the CAPTA guardian ad litem's access to all or a
3 portion of such evidence.
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- 5 (d) **[Specific limitations]** The CAPTA guardian ad litem appointed for a child
6 who is alleged to be a victim of a minor perpetrator in a delinquency
7 proceeding for abuse or neglect of a child is not entitled to interview or
8 interrogate other witnesses, to question or cross-examine witnesses, or to
9 participate in the delinquency proceeding except as an advisor and support
10 person for the child, with the responsibilities, duties, rights, and access
11 described above.

Rule 4.120 of the California Rules of Court is adopted, effective July 1, 2003, to read:

Rule 4.120. Child Abuse Prevention and Treatment Act (CAPTA) guardian ad litem for child victim in a criminal prosecution for abuse or neglect of a child

(a) **[Authority]** This rule is adopted under Welfare and Institutions Code section 326.5.

(b) **[Applicability]** The definition of the role and responsibilities of a CAPTA guardian ad litem for a child who is alleged to be a victim in a criminal prosecution for the abuse or neglect of a child applies exclusively to such criminal proceedings, and is distinct from the definitions of guardian ad litem in all other juvenile, civil, family, and criminal proceedings. No limitation period for bringing an action based upon an injury to the child commences running solely by reason of the appointment of a CAPTA guardian ad litem under Welfare and Institutions Code section 326.5 and this rule. The CAPTA guardian ad litem appointed under Welfare and Institutions Code section 326.5 and this rule is not the child's guardian, conservator, or similar fiduciary for receiving service of a subpoena on the child under Penal Code section 1328(b)(1) and may not be appointed under Penal Code section 1328(b)(2) as the child's guardian ad litem for the purpose of receiving service of subpoena of the child.

(c) **[Definition]** For purposes of this rule, "abuse or neglect" of a child is defined as set forth in 42 U.S.C. section 5106g and 45 C.F.R. section 1340.2.

(d) **[Appointment]** At the initial arraignment, the criminal court must appoint an attorney as a CAPTA guardian ad litem for a child who is alleged to be a victim in a criminal prosecution for abuse or neglect of a child. Once the attorney appointed for the child has performed the general responsibilities to that child, as provided in (e), the court may substitute a Court Appointed Special Advocate, if available, as a CAPTA guardian ad litem for the child in place of the attorney if the court finds, after hearing the recommendation of the attorney, that such substitution is in the child's best interest.

(e) **[General responsibilities]** The general responsibilities of a CAPTA guardian ad litem appointed for a child who is alleged to be a victim in a criminal prosecution for abuse or neglect of a child are:

(1) To obtain firsthand a clear understanding of the situation and needs of the child; and

(2) To make such recommendations to the court concerning the best interest of the child as the guardian ad litem finds appropriate.

1 **(f) [Specific duties and rights]** The specific duties and rights of a CAPTA
2 guardian ad litem appointed for the child who is alleged to be a victim in a
3 criminal prosecution for abuse or neglect of a child are:

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5 (1) The right and duty to interview the child;

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7 (2) The rights to be notified of any request to interview the child, to refuse on
8 behalf of the child any interview of the child by others subject to the
9 court's review on noticed motion by the person seeking the interview, and
10 to be present at any interview of the child by others, including law
11 enforcement officers, prosecuting attorneys, and defense attorneys;

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13 (3) The right to accompany the child to all hearings related to the criminal
14 proceeding, including trial, and to be present throughout the proceeding;
15 and

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17 (4) The duty to advise the court and all counsel in writing of any special
18 needs, illness, disability, or other condition of the child that may impair
19 his or her participation in the proceedings or exacerbate trauma caused to
20 him or her by the participation.

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22 **(g) [Access to evidence]**

23 (1) In order to fulfill the duties and responsibilities in (e) and (f), the CAPTA
24 guardian ad litem may file a noticed motion for access to prosecution and
25 defense evidence at the time such evidence is made available to both the
26 prosecuting attorneys and the defense attorneys, including:

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28 (i) Documents made available to both the prosecuting attorneys and
29 defense attorneys;

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31 (ii) Physical evidence relevant to the investigation upon which the
32 prosecution is based, which is made available to both the prosecuting
33 attorneys and defense attorneys;

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35 (iii) Audio or video recordings made available to both the prosecuting and
36 defense attorneys; and

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38 (iv) Transcripts of any hearings or trials related to the matter.

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40 (2) At the hearing on the motion, the CAPTA guardian ad litem is
41 presumptively entitled to view or receive copies of such evidence, at no
42 cost to the CAPTA guardian ad litem, absent a showing of good cause
43 warranting restriction of the CAPTA guardian ad litem's access to all or a
44 portion of such evidence.

1 **(h) [Specific limitations]** The CAPTA guardian ad litem appointed for a child
2 alleged to be a victim in a criminal prosecution for abuse or neglect of a child
3 is not entitled to interview or interrogate other witnesses, to question or cross-
4 examine witnesses, or to participate in the criminal court proceeding except as
5 an advisor and support person for the child with the responsibilities, duties,
6 rights, and access described above.